

Jane A. Butler
2225 E. Ajo Way
Tucson, AZ 85713
(520)724-4416
Jane.butler@pcjcc.pima.gov

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)	Supreme Court No. R-__-____
)	
PETITION TO AMEND)	Petition to Amend Rule 45 and
RULE 45 and RULE 58,)	Rule 58
RULES OF PROCEDURE)	Rules of Procedure for the
)	Juvenile Court
FOR THE JUVENILE COURT)	
_____)	

Pursuant to Rule 28, Rules of the Supreme Court, Jane Butler, Commissioner and Judge Pro Tempore for Pima County Superior Court, respectfully petitions this Court to adopt amendments to Rules 45 and 58, Rules of Procedure for Juvenile Court, governing mandatory judicial determination, as proposed.

I. Background and Purpose of the Proposed Rule Amendments

Background

When the Fostering Connections to Success and Increasing Adoptions Act was passed in 2008, it brought national attention to the educational struggles of children in foster care.¹ In 2013, the Uninterrupted Scholars Act amended the Family Educational Rights and Privacy Act of 1974² (FERPA) to allow child welfare social workers to more easily access school

¹ 42 U.S.C. 673; *Sustaining Momentum: Improving Educational Stability for Youth in Foster Care*. Retrieved March 31, 2015, from www.aecf.org/resources/sustaining-momentum, hereinafter cited as “Casey Report.”

² 20 U.S.C. § 1417(c)

records. After the passage of these two acts, studies were undertaken to measure the educational outcomes of children in foster care. Studies show clearly that youth in foster care have among the poorest educational outcomes of all student populations. Here are two examples of key findings from recent studies.

The Casey Foundation reports:³

- Less than 70% of youth in foster care finish high school before leaving care.
- Children and youth in out-of-home care experience one or two placement changes per year on average.
- Over a third of young adults who aged out of foster care reported having had five or more school changes. (Three-state study.)
- Students in foster care score 16 to 20 percentile points below others in statewide standardized tests (Washington State study).
- Only about 3% of youth obtain a bachelor's degree within a few years of emancipation.

Another study by Chapin Hall⁴ at the University of Chicago surveyed state and national studies and reports that:

- The average reading level of 17 to 18-year-olds in foster care is that of a seventh grader.
- Young people in foster care are 2 ½ to 3 ½ times more likely to be receiving special education services than young people not in foster care.

³ For fact sheet citations see: www.casey.org/friendsandfamilies/partners

⁴ Casey Report citing to: National Resource Center for Permanency and Family Connections. *Child Welfare, Education and the Courts: A Collaboration to Strengthen Educational Successes of Children and Youth in Foster Care*. Retrieved March 31, 2015, from www.nrcpfc.org/education.html.

- Youth in foster care ages 17 to 18 are twice as likely to be suspended from school as students not in foster care, and their likelihood of being expelled is three times as high.

In California, the Stuart Foundation linked statewide individual student education data and child welfare data.⁵ Key findings of the study demonstrate that students in foster care:

- constituted an at-risk subgroup that is distinct from low SES (socioeconomic status) students.
- were more likely to change schools during the school year.
- were more likely than the general population of students to be enrolled in the lowest performing schools.
- had the lowest participation in California's statewide testing program.
- had an achievement gap in statewide testing similar to other at-risk groups.
- had the highest high school dropout rate and lowest graduation rate.

A subsequent study in California highlighted the difference in education experience and outcomes by key characteristics of foster care placements, such as time in foster care, the type of foster care placement, and the number of foster care placements during the school year.⁶ The report also documents the association between foster care placement instability and school changes, low standardized test performance, as well as higher dropout rates and lower graduation

⁵ Barrat, V. X. & Berlinger, B. (2013). *The Invisible Achievement Gap, Part 1: Education Outcomes of Students in Foster Care in California's Public Schools*. San Francisco: West Ed. Available at: www.stuartfoundation.org/newsandreports/reportsandresearch.

⁶ Wiegmann, W., Putnam-Hornstein, E., Barrat, V.X., Magruder, J. & Needell, B. (2014). *The Invisible Achievement Gap Part 2: How the Foster Care Experiences of California Public Schools Are Associated with Their Education Outcomes*. Available at www.stuartfoundation.org/newsandreports/reportsandresearch

rates. The report also highlights the dynamics between student length of stay in the foster care system, disability diagnosis (special-education) and school changes.

According to the Casey Report, after the passage of the Fostering Connections Act, 64 laws related to educating children and youth in foster care were passed.⁷ For example, Pennsylvania requires an education liaison in each county to help overcome educational obstacles faced by children in foster care.⁸ In Connecticut, legislators enacted a measure that enhanced the federal requirement for a court-required social study of children in foster care to include a report on the educational status and progress in state school stability.⁹ Even in states that have not passed specific laws on school stability, agencies have issued policies and guidelines to help implement Fostering Connections.

Purpose of the Rule Amendments

The purpose of these amendments is to increase the educational stability of children and youth in foster care. The goal is to increase graduation rates and lower the truancy and drop-out rates of children in foster care. By monitoring their academic progress and educational stability, academic achievement for students in foster care should improve. Their standardized testing scores should rise to match those of the regular student population. Additionally, judicial monitoring of foster children's education should result in lowering suspensions and expulsions for children and youth in foster care.

⁷ Casey Report at 15.

⁸ *Ibid.*; Pa.R.J.C.P. Rule 1147. Educational Decision Maker. Provides that at any proceeding or upon motion, the court shall appoint an educational decision-maker for the child if it determines that: (1) the child has no guardian; or (2) the court, after notice to the guardian and an opportunity for the guardian to be heard, has made a determination that it is in the child's best interest to limit the guardian's right to make decisions regarding the child's education.

⁹ Casey report at 15.

The Department of Child Safety policy manual requires the Department to collaborate with foster care providers and schools to ensure that children in foster care are:

- provided educational stability at the time of the initial placement and each subsequent change in placement;
- provided services to help them achieve the educational potential;
- registered in a timely manner; and
- referred to a local school district [a.k.a. local education agency (LEA)] to be assessed for special education (when indicated) and other educational needs.

LEAs include traditional public school districts, charter holders, and secure care public schools.¹⁰

Arizona has passed no laws in response to the Fostering Connections Act, or adopted any provisions of the McKinney-Vento Act as state law. Apart from the efforts of some private agencies, the educational information about children and youth in foster care may found in the DCS progress report admitted at dependency hearings in juvenile court. Arizona has no statewide tracking system for educational data. In the federal data collection system that tracks dependency case level information from states and tribes, there is no measure that captures education. In a May 2014 report, the Government Accountability Office strongly called for this measure.¹¹

¹⁰ Department of Child Safety Policy manual, Chapter 3: Section 26, citing to the McKinney – Vento Homeless Assistance act, 42 USC § 11431, at seq.; The Fostering Connections to Success and Increasing Adoptions Act; The Child and Family Services Improvement and Innovation Act; 20 USC §§ 1431 et seq., Provisions of the Individuals with Disabilities Education Act (IDE A), and 20 USC §§1400 – 1445 and 34 CFR parts 300 and 303. Provisions of the Individuals with Disabilities Education Act (IDE A)

¹¹ *Ibid.*; U.S. Government accountability office. (2014). *HHS needs to improve oversight of Fostering Connections Act implementation*. Washington, DC: U.S. Government Printing Office. Retrieved from WW.GAO.gov/assets/670/663655.pdf

The American Bar Association published the “Fostering Connections Implementation Toolkit” in May 2011.¹² The implementation toolkit has specific sections for judicial considerations and questions to ask from the bench. It is recommended that judges specifically ask about educational stability for the child; how to keep the child in his or her current school; and monitor a child’s ongoing school attendance and participation.

The proposed rule amendments ensure that children’s educational needs are addressed at every dependency hearing.

Impact on Stakeholders

The **Department of Child Safety** progress reports contain a portion for the caseworker to describe the children’s educational progress. The proposed rule amendments should not burden case managers.

Attorneys or guardians ad litem assigned to represent foster children are required by Juv. R. P. 40.1 to visit with the children prior to any substantive court hearing. Including information about children’s educational process in their report to the court would not be an additional burden to them.

Foster placements and relative placements are entitled to attend court hearings and be heard about the progress of children in their care. Reporting on educational progress would not be an additional burden for placements. Moreover, foster parents often serve as “special education parents” or “surrogate parents” under the Individuals with Disabilities Education Act (IDEA).

¹²

http://www.americanbar.org/content/dam/aba/migrated/child/education/publications/toolkit_com_bined_with_cover.authcheckdam.pdf (p. 24-26)

Parents of dependent children frequently have historical information relating to a child's educational history that they are willing to share in court. Further, learning about their child's educational process while in foster care would be a benefit to them. The rule amendments will not have a negative impact on parents.

II. Contents of the Proposed Rule Amendment

The proposed rule amendments to the Rules of Procedure for Juvenile Courts include:

Rule 45 Admissibility of Evidence

The proposed amendment to this rule adds a requirement that the written report by the child safety worker address the efforts made to ensure the educational stability of a child in foster care. Specifically, the report must address the efforts made to ensure the educational stability of a child including, but not limited to the appropriateness of the child's current school placement, services to help them achieve their educational potential, resolution of school attendance issues, special education services (when indicated), and grade level progress including progress toward graduation. These elements are consistent with the *Arizona Department of Child Safety: Policy and Procedure Manual, Chapter 3: Section 26, Education for Children in Out-of-Home Care, and Chapter 2: Section 9.5 Out of Home Care Planning, Health Care Planning, Contact and Visitation Plan* as well as 42 USC §675.

Rule 58 Review Hearing

C. Reports.

The proposed amendment to this rule specifies that the DCS report provided for the Review Hearing will address the educational stability of the child.

F. Findings and Orders.

The proposed amendment adds educational stability of the child to the findings and orders concerning the needs of the child and family in F(3).

III. Pre-Petition Distribution and Comment

The proposed amendments were presented to the Committee on Juvenile Courts at their September 12, 2015 meeting. A motion to accept the proposal to amend Rule 45 and Rule 58 as identified in Appendix A of the Rule Petition passed unanimously. Caroline Lutt-Owens, Division Director, Dependent Children's Services, Administrative Office of the Courts, Arizona Supreme Court communicated with DCS Director, Gregory McKay about the petition and DCS's position with respect to the petition. Director McKay's office, after his review and that of his staff, advised that DCS had no concerns with the petition.

IV. Conclusion

The current economic climate in Arizona does not portend increased funding for programs or technology to track the educational outcomes of children in foster care. At this time, juvenile court judges are the only ones able to ensure that Arizona children in foster care meet their educational goals. Amendments to these court rules would not burden any of the participants in dependency proceedings, nor would it require any funding.

V. Effective Date of the Proposed New Rule

This rule change petition does not present an urgent matter requiring emergency adoption. The annual rule processing cycle is adequate.

RESPECTFULLY SUBMITTED this 11th day of December, 2015.


HON. JANE BUTLER
(ID: bccaa483-0eea-474d-923d-1de88260215f)

Jane A. Butler
2225 E. Ajo Way
Tucson, AZ 85713
(520)724-4416
Jane.butler@pcjcc.pima.gov

Appendix A

Rule 45 Admissibility of evidence.

B. Definition of report. For purposes of this rule, a written report by a child safety worker shall mean a narrative report setting forth, as appropriate to the hearing, the following:

1. The reasons the child was removed from the custody of the parent, guardian or Indian custodian;
2. The services provided to prevent removal.
3. The case plan goal and the services provided to achieve the goal;
4. Steps taken by the parent, guardian or Indian custodian to comply with the case plan
5. The child's current placement and, in the case of an Indian child, whether the placement falls within the preferences as set forth in the Act or whether good cause exists to deviate from the preferences;
6. The services provided to meet the child's needs;
7. The efforts made to ensure the educational stability of a child including, but not limited to the appropriateness of the child's current school placement, school attendance, services to help them achieve their educational potential, special education services (when indicated), and grade level progress or progress toward graduation;
- ~~7.~~ 8. Recommended dispositional orders;
- ~~8.~~ 9. Recommended changes to the case plan goal, services or placement; and
- ~~9.~~ 10. Recommended permanent plan.

Rule 58 Review Hearing

C. Reports. The petitioner shall provide a report to the court and the parties at least fifteen (15) days prior to the hearing which shall address:

1. The placement of the child;
2. The services being provided to the child and family, including the educational stability of the child;
3. The progress the parties have made in achieving the case plan goals; and
4. Whether the child continues to be dependent.

F. Findings and Orders. All findings and orders shall be in the form of a signed order or contained in a minute entry. At the conclusion of the hearing, the court shall:

1. Dismiss the petition and return the child to the parent, guardian or Indian custodian if the court finds the child is not dependent; or

2. Make specific findings of fact that the child continues to be dependent; and
3. Enter appropriate orders concerning placement and custody of the child and services to be provided to the family and child including the educational stability of the child;
4. Set a review hearing within the time as provided by law;
- 5-8 [No change]